Some histories stay secret, but not entirely silent: dealing with the communist past in Central and Eastern Europe

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Abstract:

From 2004 onwards, a second wave of lustration proposals emerged throughout Central and Eastern Europe, at a time when EU accession already started. Among the post-communist states, Poland, already an EU member state, extended the purpose of its previous lustration law in 2006. The same year marked the heated debate over the drafting of a lustration law in Romania, where previous proposals on this issue were not validated by the Parliament. Sixteen years after the regime change in these countries, the assessment of the formal mechanisms to deal with the past permeated the public agenda in an attempt to answer the question of how much of the documented illegal activities committed during communism remained secret and purposefully uncovered. In this article, I scrutinize the lustration processes and debates up to 2008 in two countries from the region. Based on that evidence, I argue that the salience of the transitional justice controversies during the second wave of lustration proposals plays a symbolic function, rather than pursuing a consistent policy endeavor.

Keywords: Poland; Romania; lustration law; communism; CEE; post-communism

Some histories stay secret, but not entirely silent: dealing with the communist past in Central and Eastern Europe

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"If particular representations of the past have permeated the public domain, it is because they embody an intentionality - social, political, institutional and so on – that promotes or authorizes their entry" (Wood 1999, 2)

Abstract: From 2004 onwards, a second wave of lustration proposals emerged throughout Central and Eastern Europe, at a time when EU accession already started. Among the post-communist states, Poland, already an EU member state, extended the purpose of its previous lustration law in 2006. The same year marked the heated debate over the drafting of a lustration law in Romania, where previous proposals on this issue were not validated by the Parliament. Sixteen years after the regime change in these countries, the assessment of the formal mechanisms to deal with the past permeated the public agenda in an attempt to answer the question of how much of the documented illegal activities committed during communism remained secret and purposefully uncovered. In this article, I scrutinize the lustration processes and debates up to 2008 in two countries from the region. Based on that evidence, I argue that the salience of the transitional justice controversies during the second wave of lustration proposals plays a symbolic function, rather than pursuing a consistent policy endeavor.

Keywords: *Poland, Romania, lustration law, communism, CEE, post-communism*

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Since the demise of communism in Central and Eastern Europe (CEE) in 1989, transitional justice has been invoked as the most appropriate means to deal with the past injustices while strengthening the newly - adopted democratic procedures. Predominantly chosen over criminal procedures or truth commissions, lustration was initially understood as a temporary process of screening public officials for links with the Communist Secret Services, meant essentially to reconcile the need for trust-based institutions and to protect the development of liberal democracy. Nevertheless, with democratic procedures formally in place, under pursuit, a series of legislative proposals known as “the second wave of lustration” in mid-2000s advance an expansion of the scope and of the targeted groups of lustration. This calls into question the extent to which previous lustration policies were effective in reaching their goals, as well as the role that lustration can play in post-communist countries once transition has come to an end. The present paper explores these aspects a multiple case study design, by analyzing Poland and Romania after 2006 in a comparative perspective.

Starting in 2004, the interest for the implementation of lustration policies reemerged. In the year in which the Central European and the Baltic countries became full members of the European Union, a series of initiatives meant to extend the application and the scope of early lustration programs dominated the internal debates. Slovakia, Slovenia and Latvia were among the first countries to face the second wave of lustration or what has been identified as “late lustration” (Horne 2009). In 2006, the Polish and Romanian Parliament analyzed the draft proposals for extensive administrative purges, while the Czech Republic and East Germany reentered this deliberation in 2007. This cross-national phenomenon questions one of the foundational purposes of lustration, that of ensuring that the new democratic regime is not undermined. Moreover, it points to the integration of reckoning with the past in the political rhetoric beyond the first transition years.

Studies on the status of lustration in Eastern Europe are limited to attempts at dealing with the past and in-depth analyses of legal deficiencies. Despite an increased interest in the issue of transitional justice, little comparative empirical research has been conducted. Previous studies on early lustration tended to approach the topic in any of the following three ways. A first group of studies focused unilaterally on finding the causal factor for the initiation of lustration procedures (Welsh 1996, Williams et al 2005). A second group provides explanations for the timing of screening procedures, the legal and the practical implications of different lustration attempts (Offe 1992, Schwartz 1994, Nedelsky 2004), while a third group of analyses concentrates on the moral implications and the extent to which transitional justice hinders liberal democracy strengthening (Moran 1994, Rosenberg 1995).

Apart from these, the second wave of lustration has remained unexplored to the present day. The interaction between institutional change, accountability, communication advancements and civic empowerment in the post-communist context has been given little attention so far. Cynthia Horne was one of the authors to address systematically the relationship between late lustration and the strengthening of democracy in post-communist countries by breaking the cycles of distrust and restricting corruption. The present study represents an exploratory research intended to combine empirical research with conceptual analysis, while arguing against the efficiency of legislative proposals on administrative vetting twenty years after the dismantling of communism. As such, this critical examination of the post-2006 attempts to extend the purpose and scope of screening procedures would shed more light on the evolving meaning of lustration, touching on different aspects of political credibility in the aftermath of regime change.

The remainder of this paper is organized as follows. The first part explores the definition and application of lustration procedures in CEE, while pointing out their critical aspects. The second part is dedicated to the methodological underpinnings and case study design. The substance of the early and late lustration programs is

revealed comparatively in section three. Section four concludes and suggests directions for further research.

Lustration as a "fact of life" in CEE

Lustration means "the purification of state organizations from their sins under the communist regimes" (Boed 2002: 358). This process aims at "investigating the past records of people in the public life of the new democracies" (Robertson 2006: 89) and must be distinguished from "decommunization", which refers to legally banning the communist parties, confiscating their property, and using the criminal law against former apparatchiks (Czarnota 2007: 225). More narrowly, lustration presupposes the screening and barring of former collaborators with the communist regime or members of secret services from becoming public employees or political representatives for a number of years after the regime change. In this respect, lustration laws represent "special public employment laws" (David 2006: 350), regulating access to public positions for members of the ancient regime, based on the logic of collaboration downplay.

Following Horne, I draw a distinction between "early lustration" and "late lustration" (Horne 2009). The former category refers to the initial set of lustration processes taking place as soon as possible after the regime change. Generally, a time span is set for the screening procedures and their duration varies between 5 and 10 years. The first example of early lustration being applied occurred in Czechoslovakia in 1991. On the other hand, and quite contrastingly, late lustration refers to a second wave of lustration proposals started in 2003, which aimed at expanding the scope of initial lustration, as well as the composition of the targeted groups.

In CEE, the vetting of public officials for links with the communist secret police has represented the first and the most frequently used method for settling accounts with the past. Besides, what remains common for this process as it took place in the region was the "reliance on information in the Secret Police files of the former regime

to assess past regime involvement" (Horne and Levi 2003: 2). Yet, lustration practices are different from one country to the other in what regards the timing, the set of targeted positions and the associated sanctions for past injustices, as well as the set of persons entitled to access the information about the past.

The history of lustration in each of the CEE countries follows its own path: Poland was the first country where communism collapses, but not the first one to implement a lustration law. In fact, it was only in 1997 that the Sejm voted on this initiative. On the other hand, Czechoslovakia passed a law on lustration the earliest, in November 1991, but the split of the country meant following different directions in implementing that specific legislation: in Slovakia, it was inefficiently pursued and expired in 1996, whereas in the Czech Republic it was extended indeterminately. Hungary adopted a mild lustration law in 1994, with the ending of screening procedures set for 30 June 2000. *Table 1* summarizes the most important aspects of the adoption of lustration laws in the Visegrad countries, whose mode of transition involved the so-called "round table" negotiations between Communist party leadership and opposition elites. In Bulgaria[65], characterized by "delayed transition", the debate on lustration gained leverage only after 1997 and this timing disconnected it from similar processes taking place in the region several years before.

Table 1. Enactment of lustration laws in Czechoslovakia , Hungary and Poland

Country	**Prior legislative proposals**	**Month and Year of adoption**	**% pro votes[66]**	**Amended**	**Type of pursuit[67]**
Czechoslovakia	0	October 1991	49.3%	-	Harsh
Hungary	3	March 1994	46%	1996	Mild
Poland	6	June 1997	47%	1998, 2006	Mild

[65] In Bulgaria, the first lustration law passed in 1992, but was limited to screening leaders of scientific organizations for collaboration with the Communist Party leadership.
[66] Following Williams et al (2005).
[67] Consistent with Kaminski and Nalepa (2004: 9)

Romania represented the exception among the cases of 1989 peaceful transition, being the only country to face a bloody revolution ending with the assassination of Nicolae Ceausescu on the 25th December 1989.
The enactment of lustration laws in Poland, Hungary and Czechoslovakia (see Table 1 below) reveals that the process was driven by the compromise that would be acceptable to as many members of the Parliament as possible, as the pro votes did not exceed 50% in either of the cases. Apart from the internal political dynamics, the chronology of adopting lustration also emphasized the tendency to decreasing support for such legislation as years go by. According to Williams et al (2003: 18), "the modifications that produced the centrist compromises entailed a number of additions and subtractions, which, along with other contextual factors and learning from neighbours' experiences, explains why the three cases varied in their sanctions and range of people affected".

Originally, the "lustrations systems" (David 2006: 351) have been uncritically regarded as an appropriate solution for ensuring that members of the former regime do not undermine the development of the new democracies. There are three main ways in which lustration has been defended, as identified by Williams et al. (2006). Firstly, using prophylactic arguments, focusing on making sure that democracy is safeguarded against potential threats coming from former communists. Secondly, employing blackmail arguments, claiming that those who used to work for the *nomenklatura* may be forced to act against the new state by taking orders out of fear. Thirdly, relying on public empowerment arguments brought forth the issue of establishing and maintaining the credibility of new public institutions. However, other studies on this topic warrant against the potential for "politicization" of lustration measures, in spite of their inherent purpose of "de-politicization". By and large, in spite of being an elite-driven process (Williams et al 2005: 33), lustration enjoyed a large support from civil society in CEE.

The interplay of these two approaches makes the debate on lustration and the application of specific regulations a complex process, understood by Schwartz as a

"fact of life in most Central and Eastern Europe" (1994: 461). Writing one of the most influential books on lustration, Rudi Teitel rightly points out that "politicized public [employment] laws can effect radical change when it distributes power explicitly on the basis of the new ideology" (2000: 149), leading to political manipulation and serving political disputes rather than public good. Further on, these may affect the general level of trust and the construction of institutional memory. In the understanding of Welsh (1996), the initial factors that determined the pursuit of lustration may become salient in the political struggle later on. Given the large number of actors involved in collaborating with communist secret services prior to 1989, memory plays the role of linking past and present. Individual memory, understood as "what the individual people remember, or think they remember, about their pasts", would, however, make use of information that is known. In contrast, making information available and disclosing classified documents has more to do with institutional memory, defined by Lebow (2006: 13) as "efforts by political elites, their supporters, and their opponents to construct meanings of the past and propagate them more widely or impose them on other members of society". In line with Williams et al (2005), I dismiss the hypothesis that the type of non-democratic regime and the mode of exiting from it influenced the adoption of lustration policies (Huntington 1991, Moran 1994), and I focus instead on the nature of the transitional process itself.

After scrutinizing the primary arguments surrounding the lustration debate and its most relevant aspects, the following section sets out to briefly describe the comparative bases for analyzing two case studies, before turning to the legislative processes and their implications in Romania and Poland.

Methodological underpinnings

The methodology employed in this article is based on a comparative case-study design. The systematic comparison of empirical facts and conceptual ideas is used to explain the phenomenon of late lustration in Romania and Poland after 2006,

relying on a thorough qualitative analysis of the lustration initiatives in the two countries and their effects. The comparative method (Ragin 1987) is employed throughout the paper for assessing the role of the second lustration wave in post-communist democracies and for tracking the sequence of events that strike a balance in interpreting the potency of rival explanations.

These two cases were selected for the present analysis for three reasons: (1) the equal time-span for settling accounts with the past and the same year for embarking on second wave lustration initiatives[68]; (2) the type of relationship they had with Moscow before 1989, which allowed them to develop their own secret services: the *Sluzba Bezpieczenstwa* (SB) in Poland and the *Securitate* in Romania[69]; and (3) the different ends of the spectrum they belong to in what concerns the adoption of lustration policies, which allows for meaningful cross-national comparison. The time frame under consideration is comprised between 2006 and mid-2008, the first being the year in which lustration proposals started to reappear on the public agenda, while the latter marks the farthest point in the development of the debate.

Lustration before 2006 and after: The Romanian Case

The main differentiation in the strategies used for reckoning the communist past in Poland and Romania consisted in the type of pursuit undertaken, as emphasized in the legislative drafts. Poland was recognized for its future-oriented emphasis in its early lustration policy, whereas Romania seemed more inclined towards backward-looking proposals (Petrescu 2008: 16). Although never adopting a lustration law per se, Romania was confronted with three important attempts for passing a specific policy on the vetting of public officials.

[68] For this reason, the East-German case is not included.
[69] The Baltic States were excluded from the analysis, due to two main structural distinctions: the lack of a quasi-independent locally-formed secret police and the significant Russian minority settled in those countries.

In March 1990, the Timisoara Proclamation[70] was published, with article 7 making clear reference to the 1989 Revolution being not only anti-Ceausescu, but also anti-communist. The Proclamation required limiting the participation of former communists in high-state positions. However, it took three more years for a former political prisoner to draft a law on lustration and access to files and six more years for a modified draft version of it to pass the parliamentary vote. In 1999, the Law on Access to One's Own File and Securitate's Unveiling as Political Police was adopted with the goal of the screening for past collaboration with the Securitate. The law included no sanction for those found guilty of secret services involvement, but their names would be made public. With the creation of the National Council for the Study of the Securitate Archives (NCSSA) in 2000, the process of uncovering former agents gained visibility through the frequent scandals over public figures involved in immoral activities during communism. This has come to be known as the so-called "dosariada"[71] phenomenon.

According to the law, the eleven members of the College of the NCSSA were to be first recommended by parties (also, the President and the Prime Minister may name their own favorites) and than appointed by Parliament through vote for a period of four years, with their beginning and end corresponding to electoral mandates. The potential of political manipulation was thus perceived as quite high, since the Council was accountable only in front of the body nominating it.

By 2002, 63% of the political leaders were still former communist leaders (Cioflanca 2002: 85), whereas the number of those lustrated was below 10,000. The data gathered by Stan (2008: 131) show that the network of informers as of December 1989 included at least 507,003, and was supplemented by 13,275 agents and 984 civilian personnel. Moreover, in Romania, the most significant predictor of being part of the new business elite was past membership in the communist leadership (David 2003: 414).

[70] The text of the Timisoara Proclamation is available online at http://www.ceausescu.org/ceausescu_texts/revolution/procl_tm_eng.htm [last accessed 10 March 2011]

[71] "Dosariada" could be translated as "the rush after Secret Services files", mainly pointing to the political manipulation behind the settling of accounts with the past.

In 2006, a new draft initiated by the Democratic Liberal Party (DLP) proposed that the persons who have held certain public offices during the communist regime (including leading positions in the Romanian Communist Party, leading positions in the communist students' unions, editors of the media-agencies, rectors and deans from the political educational system, prosecutors, presidents of the Supreme Court) should be banned, for a period of 10 years, from holding certain public offices (president of the state, member of the government, senator or deputy, prefect, mayor, judges and prosecutors, member of the diplomatic corps). The latter proposal belongs to the late lustration programs, imposing harsher sanctions than the previous law. However, the DLP proposal was voted down after the special committee of the Parliament in 2008 delivered its reasoning on it. The denial of access to public offices was found unconstitutional and in contradiction with the democratic values promoted in the country. Moreover, the late lustration system was associated with application deficiencies common to prior attempts to lustrate. Among these, the most relevant were: incomplete information (missing files, incomplete folders, functioning of state councils dealing with Secret files) and the impossibility to clearly draw the line between the status of "collaborator" and that of "victim".

The Polish Case

Poland was also a late-comer in what concerns the adoption of early lustration. Immediately after the demise of communism, Mazowiecki pursued the so-called "thick line" politics between past and present, leaving the door opened to accepting former members of the ancient regime in the new political systems if they were embracing the newly-adopted democratic principles (Stan 2008: 79). In 1991, Olszewski proposed a bill that would require the Ministry of Interior to screen all elected officials for working for the communist secret services, but that resulted in the collapse of the government, after the Interior Minister Antoni Macierewicz denounced 64 members of the Parliament that used to work as collaborators before the regime change (Calhoun 2002: 503-505).

After a series of six other failed proposals between 1994-1996, the lustration law passed in March 1997 screened current officials and candidates for public offices for past collaboration with the SB between 1944 and 1990 by checking their statements of (non-)collaboration and punishing solely the lustration liars. The sanction for this was a 10-year ban on holding public offices. The positions screened included the President, members of the Parliament and cabinet, judges and prosecutors, persons appointed to senior posts by the President, the Prime Minister or the General Prosecutor. In 1998, amendments to the law extended its scope to include all barristers (Williams et al 2005: 27). According to Lavinia Stan, there were more than 98,000 secret spies prior to 1990 and information on 1,200 informers was destroyed in 1990 (Stan 2008: 87). The total number of persons subjected to lustration was 23,000 as of January 2004 (Kaminski and Nalepa 2004: endnote 25).

By 2006, the Law and Justice Party (LJP) proposed that the lustration scope be extended to include all public figures (teachers, journalists, diplomats, municipal officials, heads of state-owned companies, editors, publishers and school principals). The affidavits of these persons would be made public and liars would be fired from their current positions and be denied their right of access to any public office for ten years. On 15 May 2007, the Institute of National Remembrance (*Instytut Pamięci Narodowej)* was given provisional lustration powers, decision which led to several controversies regarding the decision-making power of this institution (Stan 2008).

Both Romania and Poland were inclined to adopt the “inclusive” lustration approaches before 2006, where sanctioning occurs only for lying and not for past wrongdoings. By revealing the truth, a person may retain his/her public function and the so-called “value-based discontinuity” occurs (citizens knowing about this may control against repetition of the violations committed in the past). David Roman even places Poland in the category of “reconciliatory inclusive” systems (David 2006: 360), with lustration certificates being made public only in the case in which the concerned official refuses resignation or transfer to a non-lustrated position. The

laws applied in that period did not restrict access of former collaborators to meaningful political participation, but rather relied on the expectation that they will voluntarily step down from their positions, a fact, which, at least in Romania, by 2002 “had not happened yet” (Stan 2002: 54).

Late lustration and its symbolic function

Resurfacing as a salient political issue after 2006, lustration policies are considered functional and symbolical attempts to come to terms with the past in a more efficient way than previous application of similar legislation. The vetting procedures before and after 2006 in both Romania and Poland are characterized by a set of distinctive features in terms of initiators, coverage and coupling with other reform packages. As opposed to the previous wave of lustration laws, proposed by opposition forces in all Eastern Europe (Stan 2008), from 2006 onwards the policies for limiting the participation of former collaborators in government were drafted by the parties in power at that time - Law and Justice Party (LJP) in Poland and Democratic Liberal Party (DLP) in Romania.

Moreover, the coverage extended to comprise the educational, municipal offices and media positions, in an attempt to restore the trust in institutions (Horne 2009). On top of that, the timing of renewal of lustration procedures matched the advancement of anti-corruption packages, which made transitional justice instrumental to eliminating privileged economic relations. As such, the function of lustration became highly politicized, serving temporary interests for opposition or ruling government. It has also become part of the political culture of countries in which the democratic ideals stated in 1989 still resonate two decades years after regime change. The practical drawbacks in applying earlier lustration (missing files, incomplete folders, definition of “collaborator”, and constitutionality of denial of access to public offices) resurface with the newly proposed programs of vetting officials, thus pointing to the fact that in designing the new laws, no substantial changes were envisioned for a more accurate procedure of coming to terms with the past. Additionally, the ageing of the

adult population able to collaborate with the secret services prior to 1990 seems to be overlooked by the legislative proposals after 2006. Considering that they did not address the outstanding problems related to the effectiveness of prior lustration attempts, the rationale of the late lustration proposal must be sought for at a symbolical level.

Drawing on Edelman's theory of symbolic uses of politics (1964), the efforts to lustrate officials formerly linked to the communist secret services after 2006 play two important symbolic functions: firstly, the function of social adjustment, necessary on the political scene and in political discourses for bringing closer those with similar political opinion; secondly, the so-called function of the "externalization" of unsolved problems, intended to remove attention from unsuccessful reforms, economic drawbacks etc. in an attempt to put aside those anxieties prior to electoral periods. Additionally, while trying to appeal to the citizens (either voters or support groups) by making reference to the idea of lustration, a certain way of dealing with the problem is revealed – that is in conformity with the general perception and expectation, in this case a functional law with effective outcomes. Going back to the words of Nancy Woods (1999: 2), "it is an embodiment of the intentionality" permeating the public domain only occurs when it comes in line with the direction of contemporary interests.

The recurrence of the theme of lustration as part of the political culture of Central and Eastern European democracies goes beyond the practical implications of placing the administrative purges debate in the agenda-reforming and institution-strengthening conundrum. In fact, it directs towards a proper understanding of the evolving definition of lustration. In the words of Cynthia Horne (2009 346):

"Defining lustration as vetting of politicians no longer captures the reality of vetting in the region. Defining lustration as a process focused on ascertaining secret police collaboration also does not capture the criteria being currently used for employment

exclusion. […] At its essence, lustration is a form of employment-vetting: who that involves and the criteria for that exclusion are the subject of debate".

Moreover, the attempts to confront participation in the former secret services activities move beyond the practical functions and become what Himmelstrand (1960: 34) calls "symbol acts", which are political efforts that are both instrumental and expressive in acquiring public opinion support. Graber (1976) refers to these as "condensation symbols", which are never clearly defined, but have the power of compressing not only specific images and attitudes, but also evaluative judgments capturing the most relevant aspects of it. In the Polish and Romanian cases, "collaboration with the secret services" remained both under-defined and uncovered to a large extent, in spite of the recurrence of lustration on the political agenda. To a certain extent, the ambiguity surrounding it plays into the dynamics of the lustration resurfacing at different points in time, as "condensation symbols are particularly useful when applied to ambiguous situations because they enable an individual to focus on the specific aspects of the situation that are most meaningful" (Zarefsky 1986: 11)

In part, this lack of a clear definition can be ascribed to "the inconvenience and danger" (Graber 1976: 294) of making this explicit, in particular with a view to outcomes such as the downfall of government in Poland in 1991 or the "dosariada" scandal in Romania in the early 2000. Overall, lustration remained politicized and served political interests as far as 2006. Kaufel and Carley (1993) referred to reform processes being rhetorically condensed into "pregnant placeholders", a reference category which "names overarching handles of hot clusters of ideas whose details have yet to be ironed out or agreed upon" (Kaufel and Carley 1993: 207). Coming in and out of the political discourse at convenient times, with its characteristic ambiguity, transitional justice in Poland and Romania serves a symbolic function, rather than being subscribed to a systematic public policy pursuit.

Conclusions

This study assessed the role of late lustration legislative attempts in Poland and Romania from 2006 to 2008 in comparison with the vetting procedures applied prior to this period. In effect, the 2006 drafts focused on expanding the scope of administrative purges, as well as the composition of the target group. The failure of both proposals in Parliament emphasized a two-fold dynamics: on the one hand, their dismissal was based on the fact that they did not respond with the problems emerged from the implementation of previous attempts to lustrate and thus offered no solutions to dealing with them; on the other hand, they seemed to ignore aspects such as the aging of the target groups, pointing to a need to understand lustration as a political symbolic act, which its characteristic ambiguity and contestation in the public sphere. While the benefits of such new programs cannot be tracked outside the sphere of political rhetoric, the second wave lustration proposals play an important symbolical function: they echo the ideals of the 1989 regime changes and they show that the past should not be treated as a legacy, but rather came to terms with.

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